

State of Wisconsin

LEGISLATIVE REFERENCE BUREAU

Appendix A ... segment I

LRB BILL HISTORY RESEARCH APPENDIX

The drafting file for

2011 LRB-2457 (For: Rep. Kerkman)

has been transferred to the drafting file for

2013 LRB-2250 (For: Rep. Kerkman)



RESEARCH APPENDIX - **PLEASE KEEP WITH THE DRAFTING FILE**

Date Transfer Requested: 05/06/2013 (Per: TJD)

The attached draft was incorporated into the new draft listed above. For research purposes the attached materials were added, as a appendix, to the new drafting file. If introduced this section will be scanned and added, as a separate appendix, to the electronic drafting file folder.

2011 DRAFTING REQUEST

Bill

Received: **07/26/2011**

Received By: **phurley**

Wanted: **As time permits**

Companion to LRB:

For: **Samantha Kerkman (608) 266-2530**

By/Representing: **Tami Rongstad**

May Contact:

Drafter: **phurley**

Subject: **Criminal Law - crimes agnst kids**

Addl. Drafters: **tdodge**

Extra Copies:

Submit via email: **YES**

Requester's email: **Rep.Kerkman@legis.wisconsin.gov**

Carbon copy (CC:) to:

Pre Topic:

No specific pre topic given

Topic:

Cosleeping with a child while intoxicated

Instructions:

See attached

Drafting History:

<u>Vers.</u>	<u>Drafted</u>	<u>Reviewed</u>	<u>Typed</u>	<u>Proofed</u>	<u>Submitted</u>	<u>Jacketed</u>	<u>Required</u>
/P1	phurley 07/27/2011	kfollett 08/16/2011	rschluet 08/16/2011	_____	lparisi 08/16/2011		S&L Crime
	phurley 07/25/2012	jdye 08/09/2012		_____			
	tdodge 08/03/2012			_____			
/P2			jfrantze 08/09/2012	_____	mbarman 08/09/2012		S&L Crime

FE Sent For:

<END>

2011 DRAFTING REQUEST

Bill

Received: 07/26/2011

Received By: phurley

Wanted: As time permits

Companion to LRB:

For: Samantha Kerkman (608) 266-2530

By/Representing: Tami Rongstad

May Contact:

Drafter: phurley

Subject: Criminal Law - crimes agnst kids

Addl. Drafters:

Extra Copies:

Submit via email: YES

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/P1	phurley 07/27/2011	kfollett 08/16/2011	rschluet 08/16/2011	_____	lparisi 08/16/2011		S&L Crime

FE Sent For:

12/8/11 jld
8/19
Kms
8/19
<END>

2011 DRAFTING REQUEST

Bill

Received: 07/26/2011

Received By: phurley

Wanted: As time permits

Companion to LRB:

For: Samantha Kerkman (608) 266-2530

By/Representing: Tami Rongstad

May Contact:

Drafter: phurley

Subject: Criminal Law - crimes agnst kids

Addl. Drafters:

Extra Copies:

Submit via email: YES

Requester's email: Rep.Kerkman@legis.wisconsin.gov

Carbon copy (CC:) to:

Pre Topic:

No specific pre topic given


Topic:

- Cosleeping with a child while intoxicated

Instructions:

See attached

Drafting History:

<u>Vers.</u>	<u>Drafted</u>	<u>Reviewed</u>	<u>Typed</u>	<u>Proofed</u>	<u>Submitted</u>	<u>Jacketed</u>	<u>Required</u>
/P1	phurley	1 P1 kf 8/16		_____	_____		S&L Crime

FE Sent For:

<END>



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JUL 27 2011

July 15, 2011

Representative Samantha Kerkman

Attn: Tami Rongstad

66th Assembly District

PO Box 8952

Madison, WI 53708-8952

RE: "Caylee's Law" and Proposed Impaired Co-Sleeping Legislation

Dear Representative Kerkman:

This letter will serve to acknowledge receipt of the preliminary draft of the proposed "Caylee's Law" you forwarded to this office for review. Thank you.

As you know, at the moment, "Caylee's Law" appears to have much public support and is certainly worthy of further consideration. One would think that a responsible parent would immediately contact law enforcement to report a death or a child missing and that such legislation is not necessary. The Anthony murder case in Florida shows us otherwise. On the other hand, one does not want to hamper law enforcement's ability to properly investigate such cases and make their job more difficult. I am in the process of reviewing the proposed legislation and hope to be able to respond to you shortly.

Further, as briefly discussed with Tami, further consideration should be given to legislation making it a crime to co-sleep or bed share with an infant while one is intoxicated or impaired. Similar to "Caylee's Law," one would think that a responsible parent or caregiver would not sleep with an infant while intoxicated...but they do, and as a result, the child either dies or suffers great bodily harm due to rollover injuries.

For your information, I have enclosed recent news articles and information about the dangers of co-sleeping. At the present time, there is no specific statute that prohibits impaired co-

sleeping as such. The closest law on the books appears to be contributing to the neglect of a child where death is a consequence in violation of Section 948.21, Wis. Stats. Enclosed please find a copy of the Wisconsin Jury Instruction for your review. Please note that the law requires the State to prove beyond a reasonable doubt that the person responsible for the child's welfare "intentionally contributes" to the neglect of the child. This element creates confusion for a jury, and I believe specific statutory authority is needed.

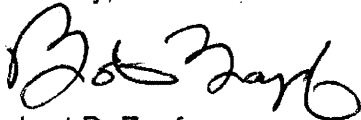
Please know that the issue is not the advantages or disadvantages of co-sleeping but the harm or death caused by **"IMPAIRED/INTOXICATED"** co-sleeping or bed sharing.

It is my opinion, similar to the drunk driving law that makes it a crime with increased penalties for an impaired drunk driver who operates a vehicle with a small child, there should be a law that prohibits parents or caregivers from co-sleeping or bed sharing with a child when they are impaired or intoxicated. In other words, intent needs to be removed from the law and the offense should be strict liability. If you co-sleep or bed share with a child and you are impaired or intoxicated, you are responsible (guilty) ~~for~~ the result and harm caused to the child. The penalty structure could be similar to Section 948.21 as follows:

- (a) A Class H felony if bodily harm is a consequence
- (b) A Class F felony if great bodily harm is a consequence
- (c) A Class D felony if death is a consequence

Again, thank you for permitting me the opportunity to share my thoughts with you. I would be glad to discuss this and other issues at your convenience. If you have any further questions regarding this matter, please feel free to contact the undersigned at your convenience.

Sincerely,



Robert D. Zapf
District Attorney
State Bar No. 1014578

Enclosure

RDZ:tab

STATE OF WISCONSIN

Plaintiff,
-vs-

Gary J. Saucedo
4622 8th Avenue Lower
Kenosha, WI 53140
DOB: 02/13/1975
Sex/Race: M/HW
Eye Color: Brown
Hair Color: Brown
Height: 5 ft 7 in
Weight: 175 lbs
Alias:

FILED

AUG 27 2010

REBECCA MATOSKA-MENTINK
CLERK OF CIRCUIT COURT
Defendant,

CRIMINAL COMPLAINT

DA Case #: 2010KN002456

kpd1011553

File No. 10-CF-

810

Hon. _____

~~MARY K. WAGNER~~
Circuit Judge Branch 6

JUL 27 2011

Kenosha County District Attorney Robert D. Zapf, being first duly sworn, states that:

Count 1: CHILD NEGLECT RESULTING IN DEATH

The above-named defendant on or about January 25, 2010, in the City of Kenosha, Kenosha County, Wisconsin, being a person responsible for the welfare of his child, Joseph S., DOB: 08/03/09, age 5 months, through his actions or failure to take action, did intentionally contribute to the neglect of his child, resulting in the death of the child, as a result of co-sleeping with the child, contrary to sec. 948.21(1)(d), 939.50(3)(d) Wis. Stats., a Class D Felony, and upon conviction may be fined not more than One Hundred Thousand Dollars (\$100,000), or imprisoned not more than twenty five (25) years, or both.

PROBABLE CAUSE:

On Monday, January 25, 2010 at approximately 5:00 a.m., City of Kenosha Police Officers Schrandt, Apker, Sgt. Riesselmann and others were dispatched to the residence located at 4622 8th Avenue, in the City and County of Kenosha, State of Wisconsin, regarding an infant not breathing. Officer Schrandt reports that upon arrival, he was met by Gina Barker, the mother of the child, who was crying hysterically and screaming that her baby was not breathing. Officer Schrandt then met the defendant, later identified as the father of the child, attempting CPR. Officer Schrandt reports that the child appeared not to be breathing and was unresponsive. Officer Schrandt reports that paramedics arrived, took over CPR and transported the child to Kenosha Hospital. The child was subsequently pronounced dead by Dr. Kambol at 5:46 a.m.

Sgt. Riesselmann reports that upon his arrival at the residence, he spoke with the defendant who stated, "I woke up lying on top of him, I was sleeping on him." Officer Hill also responded to said residence and spoke with the defendant, who stated that, "I slept on Joey," and admitted to drinking at a bar across the street. Officer Apker spoke with the defendant and smelled a strong odor of alcohol on the defendant's breath while speaking with him. The defendant agreed to submit a specimen of his blood for testing. Officer Apker transported the defendant to Kenosha Hospital where a specimen of his blood was drawn at approximately 7:40 a.m. Officer Apker caused the defendant's blood to be transported to the State Crime Laboratory for testing.

The defendant later gave a more detailed statement to Detective Richter. The defendant told Detective Richter that earlier that day he was at his uncle's residence watching the playoff game and began drinking alcohol at 7:30 or 8 p.m. (about halftime). The defendant admitted consuming a six-pack of 12 ounce cans of beer and then went home around 10:30 p.m. He stated he later went to the "Cheers" bar across the street at about 11 or 11:30 p.m. where he consumed a pitcher of beer and then returned home around 1-

STATE OF WISCONSIN - VS - Gary J. Saucedo

1:30 a.m. The defendant states that when he arrived home, the child's mother told him it was his turn to take care of "Joey." The defendant states that he fed Joey a bottle of formula and then laid down on the bed with Joey. The defendant states that he was playing with him for a few minutes. The defendant states that Joey was on top of his chest as he was laying down on the bed on his back and Joey was facing him, chest to chest. The defendant states that Joey fell asleep on his chest and that he fell asleep a few minutes later, approximately 2-2:30 a.m. The defendant states that a while later he woke up at approximately 5:00 a.m., and he was on his side but kind of on top of Joey and found him not breathing. He then attempted CPR and 911 was called. The defendant admitted to smoking marijuana but states that he did not smoke any on Sunday.

Sara Schreiber, toxicologist for the Wisconsin State Crime Laboratory, analyzed the defendant's blood and found ethanol in the amount of 0.127% per weight per volume and active Delta-9 THC, a restricted controlled substance, in the defendant's blood.

Upon further investigation, Officer Deates and other officers searched the above residence and found marijuana, marijuana residue and other drug paraphernalia in the home.

On January 25, 2010, Dr. Mark Witeck, Kenosha County Medical Examiner, performed an autopsy on the body of Joseph S. and determined the child's cause of death was due to asphyxia by overlying and co-sleeping.

Your complainant is an attorney with the Kenosha County District Attorney's Office, who bases his knowledge of this complaint on:

- The official law enforcement agency reports of the Kenosha Police Department prepared by Det. Richter, Sgt. Riesselmann, Officers Schrandt, Apker, Hill and Deates, which reports were prepared in the normal course of law enforcement duties;
- Statements by the defendant, which were made contrary to his penal interests;
- The toxicology reports of Sara Schreiber, which reports are prepared in the normal course of laboratory duties;
- Knowledge of the cause of death of the child from reading the autopsy protocol of Dr. Mark Witeck, Medical Examiner's for Kenosha County, licensed to practice medicine in the State of Wisconsin and who performed said autopsy according to accepted medical practice in the normal course of his business duties.

Subscribed and sworn to before me,
and approved for filing on:

This 26th day of August, 2010.

R. J. Saucedo
Complainant

Angela G. Gable
Assistant District Attorney

I find that probable cause (exists) (does not exist) that the crime was committed by the defendant and order that he be (held to answer thereto) (released forthwith).

Date: _____

(Judge) (Court Commissioner)

RDZ:tab

Did infant son die from co-sleeping, or SIDS?

Attorneys present cases as father's trial begins

BY JESSICA STEPHEN
jstephen@kenoshanews.com

Was a Kenosha father too drunk to properly care for his 5-month-old son who died from alleged co-sleeping, or did the baby die suddenly on a night his father happened to go out drinking at a neighborhood bar?

Lawyers offered their answers Tuesday before testimony began in Gary J. Saucedo's trial.

Saucedo, 36, is charged with felony child neglect leading to his son's death in January 2010. Saucedo said he fell asleep with Joey on his chest and later woke up on top of the boy at their home in the 4600 block of Eighth Avenue.

If convicted, Saucedo could face 15 years in prison.

"How is it that a 5-month-old child is dead? An otherwise happy, healthy baby?" Kenosha County District Attorney Robert Zapf asked. "... This is a tragic consequence of intoxication."

Saucedo's blood alcohol level was about 0.13 percent nearly three hours after Joey was found dead. According to estimates, that suggests Saucedo had a blood alcohol level of more than 0.20

percent about 2 a.m., when he got home from a nearby bar and first laid down with his son.

"That's the neglect," Zapf said. Saucedo's compromised state kept him from providing Joey a safe sleeping environment — one of the duties of a parent and, when it is



Robert Zapf



John Ward

lacking, one of the legal elements that shows neglect. That failure to take care led to Saucedo rolling onto and smothering his son, Zapf argued.

But, defense attorney John Ward countered, if Joey died from being suffocated while co-sleeping, where was the medical evidence?

Joey had no petechiae, the tiny, round hemorrhages usually seen in the eyes or on the skin when someone is smothered. Joey's blood also had not broken down, as is often seen in co-sleeping deaths. And, Ward said, the baby was not cyanotic, having turned blue from a lack of oxygen.

The only sign of death from co-sleeping that Joey had was congestion, which Ward attributed to Joey having the flu.



KENOSHA NEWS PHOTOS BY SEAN KRACIAC
Gary Saucedo listens during opening statements on Tuesday.

"What we have here is an unexplained death," said Ward, who promised to call experts to explore his theory that Joey died from Sudden Infant Death Syndrome.

Zapf wasn't convinced, largely because Saucedo told police he fell asleep with his son on his chest and found him not breathing, wedged under his arm with the creases of his shirt pressed into the baby's face.

Zapf promised jurors would hear from police who interviewed Saucedo, who reportedly said, "everything is my fault" and repeated that he never should have slept with his son.

Ward encouraged jurors to consider the context of those statements.

"What we have here is a father who wakes up and finds his child suddenly dead. And he second-guessed what went wrong. He doesn't know why his child is dead, so he tries to piece it back together."

Poll finds young adults going high school down, college

WASHINGTON (AP)

— Young adults say high schools are failing to give students a solid footing for the working world or strong guidance toward college, at a time when many fear graduation means tumbling into an economic black hole. Students who make it to college are happy with the education they get there, an Associated Press-Viacom poll says.

Most of the 18- to 24-year-olds surveyed gave high schools low grades for things that would ease the way to college: A majority say their school wasn't good at helping them choose a field of study, adding them in finding the right college or vocational school or assisting them in coming up with ways to pay for more schooling.

Two-thirds say students should aim for college if they aren't sure career they want to pursue. The majority of high school seniors probably will go to college, but up with a college degree, however. Among those years ahead of them 25- to 34-year-olds — about a third hold a higher degree, according to the Census Bureau, 10 percent get an associate degree.

Students measure their satisfaction

Young people give mediocre marks to America's high schools but have greater faith in its colleges, according to a poll of 24-year-olds.

Extremely/very satisfied
Somewhat satisfied
Not too/not at all satisfied

How satisfied are you with the education you received in high school?

How satisfied are you with the education you received in college?



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IMAGE LEGEND



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DEATHS

Doraine Hollister Anderson, 90, of Kenosha, died Tuesday at Grandview.

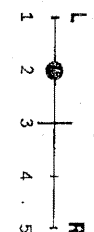
Adelitta Ramos-Sumner, 40, of Chicago, formerly of Kenosha, died

BIRTHDAYS



Brooke Clements turns 8 today. She enjoys art, piano.

OPINIONS



IN

Advice... Business... Classified... Promises

Local News

Comments? Contact Managing Editor: Karl Frederick | (262) 656-6377 | kfrederick@kenoshanews.com

KENOSHA NEWS | FRIDAY, APRIL 22, 2014 | **A3**

S
more, go to www.kenoshanews.com and click on Content to view 911 calls, crime and related data from

et for alleged r soliciting

Joshua therapist will
l in May for allega-
it she had sex with
t and asked that
o kill her husband.
D. Hein, 46, faces
arges, including
for soliciting
If convicted, Hein
ne than 30 years in
ers met Wednesday
is legal matters
led the trial would
y 31 before Ken-
nty Circuit Judge
7 Mollisaukas.
was charged in Oc-
10 after a former pa-
f Hein hypnotized,
"brainwashed"
sex with him while
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eal his car and ruin
the complaint said.
attendant said Hein did
him to kill her hus-
it they discussed
- she allegedly
: \$50,000 cash to
3 of the patient's

No verdict in co-sleeping death

BY JESSICA STEPHEN

jstephen@kenoshanews.com

After nearly 4½ hours of discussion, jurors asked to continue deliberations Monday in the case against a Kenosha father charged for his 5-month-old son's alleged co-sleeping death.

Deliberations began just before noon Thursday in the case against Gary J. Saucedo, who is charged with felony child neglect leading to his son Joseph's death in January 2010. Saucedo said he fell asleep with Joey on his chest and later woke up on top of the boy at their home in the 4600 block of Elgin Avenue.

By 4:30 p.m., jurors were headed home with plans to return Monday; the courthouse is closed Friday.

Attorneys argued that jurors could find their verdict by answering one question: Was

Saucedo too drunk to properly care for his son, or did his baby die suddenly on a night that Saucedo happened to go out drinking at a neighborhood bar?

"This case is not about the advantages or disadvantages of co-sleeping. Co-sleeping is not the issue," Kenosha County District Attorney Robert Zapf said during closing arguments. "Impaired co-sleeping is dangerous. That's what this is about."

Saucedo's blood alcohol level was about 0.13 percent nearly three hours after Joey was found dead. According to estimates, that suggests Saucedo had a blood alcohol level of more than 0.20 percent about 2 a.m., when he got home from a nearby bar and first laid down with Joey.

"He chose to sleep with his child impaired and rolled over

and smothered his child," Zapf said.

That choice meant jurors should find Saucedo guilty, Zapf argued, at least according to the letter of the law.

Before deliberations began jurors were instructed on how to interpret the law. For child neglect causing death, jurors could convict Saucedo if they decided he either meant to neglect Joey or was aware that his actions, or failure to act, was practically certain to add up to a dangerous situation.

Jurors also were told they could consider the definition of neglect, which legally means that a parent or caregiver has failed, for reasons other than poverty, to care for a child appropriately.

The law gives examples like food and clothing and shelter, but Zapf argued that proper care should extend to a safe

sleep environment. On that point, he said, Saucedo failed.

But Defense Attorney John A. Ward vehemently disputed that. Citing the inspiration of Holy Week, in which Christians celebrate "another

miscarriage of justice," Ward urged jurors to think carefully about Saucedo's situation.

Some of the key evidence against Saucedo included his own statements to police, in which he blamed himself for his son's death and admitted waking up with his son under his arm.

"Everything is my fault," he said. "...I slept on Joey. I slept on Joey."

Despite a law requiring police to tape interviews with felony suspects, Ward said officers did not record their conversations with Saucedo. Ward also pointed to the lack of medical evidence prov-

ing Joey died from asphyxia due to co-sleeping. Four doctors testified during the four-day trial and, Ward said, they agreed there was only one sign of co-sleeping in Joey's case.

However, at least one doctor said there were more signs that Joey died from Sudden Infant Death Syndrome.

Finally, Ward argued that jurors should not convict Saucedo because he never meant to fall asleep with his son or, in legal terms, he never meant to provide care in the form of a safe sleeping environment, which isn't even covered in the legal standard for child care.

"He accidentally fell asleep," Ward said. Deliberations will continue Monday morning.

Saucedo is out of jail on bond. If convicted, he faces 15 years in prison.

First 165 roundabout completion by early June

BY BILL GUIDA

bguida@kenoshanews.com
PLEASANT PRAIRIE —
Scott Whitsett anticipates the

Hwy. 165 Construction

— Road construction



KENOSHIA NEWS

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★★★ 7

Co-sleeping death ends in mistrial

BY JESSICA STEPHEN

Stephen@kenoshanews.com

The case against a Kenosha father charged for his infant son's alleged co-sleeping death ended in mistrial Monday after jurors said they were deadlocked.

Signs of difficult deliberations first surfaced last week in Gary Saucedo's trial. After several days of testimony, jurors deliberated 4½ hours Thursday before they asked to go home for the weekend; the courthouse was closed Friday.

Less than two hours after resuming deliberations Monday, jurors sent Kenosha County Circuit Judge Mary Wagner a note saying they could not reach a unanimous decision.

Kenosha County District Attorney Robert Zapf questioned whether jurors had enough time to deliberate, while

defense attorney John A. Ward asked Wagner to consider letting jurors talk until noon to try to reach some decision.

But, considering the roughly six hours dedicated to sorting through the evidence, Wagner felt it would have been fruitless for jurors to continue. She dismissed the jury just after 10:30 a.m.

Saucedo smiled as he left the courthouse, onlookers said. He is out of jail on bond, but is still charged with felony child neglect leading to his son Joseph's death in January 2010.

Saucedo said he fell asleep with 5-month-old Joey on his chest and later woke up on top of the boy at their home in the 4600 block of Eighth Avenue. If convicted, he faces 15 years in prison.

A new trial will be scheduled.

Jurors split, attorneys prepare for another trial

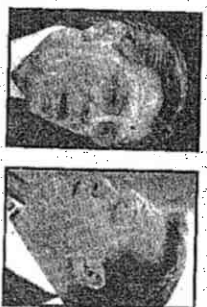
BY JESSICA STEPHEN

stephen@kenoshanews.com

After jurors indicated they could not reach a verdict, lawyers were left to wonder Monday just how close it came for Gary J. Saucedo.

"There was a split. Some were guilty, and some were not guilty. I don't know how many, but they couldn't decide," said defense attorney John A. Ward, who represented Saucedo.

The count isn't necessarily of consequence—a hung jury is a hung jury, the resulting mistrial is still a mistrial, and Saucedo



Robert Zapf
John Ward

will stand trial again unless lawyers reach some plea agreement; that's not likely, Kenosha County District Attorney Robert Zapf said.

But attorneys on both sides said they would be curious to hear from jurors, since their viewpoints on the case could influence how they litigate the alleged co-sleeping death in the future.

Both guessed the jury struggled with a legal technicality, which would have required jurors to find that Saucedo either meant to neglect his 5-month-old son Joey or was aware that his actions, or failure to act, was practically certain to add up to a dangerous situation.

During trial, jurors heard that Saucedo admitted falling asleep with Joey on his chest, then waking up to find Joey under his arm. Three doctors testified that Joey likely died from asphyxiation due to Saucedo rolling onto the baby. But one doctor wasn't convinced and called the cause of death undetermined, possibly even sudden infant death syndrome.

As jurors interpreted those opinions, they were asked to consider the definition of neglect, which legally means that a parent or caregiver has failed, for reasons other than poverty, to care for a child appropriately.

TRIAL: Felony case

From Page A1

ately.

Safe sleep environment isn't among the examples the law gives for proper care. But, Zapf argued, Saucedo did fail his, particularly because Saucedo's blood alcohol level was an estimated 0.20 percent or more when he laid down with Joey.

"It's not an issue of the benefits of cosleeping. It is an issue of dealing with impaired cosleeping — a parent makes decisions and, ultimately, the child pays the price," Zapf said.

Ward repeatedly pointed to the lack of medical evidence to support death from co-sleeping and argued that Saucedo never planned to sleep with Joey.

That was enough to convince one juror, an alternate who was dismissed before deliberations. Ward said he spoke with the juror, who told him she "was satisfied" that Saucedo was not guilty of a crime.

Zapf had not spoken to any jurors as of Monday.

"I don't know what kind of message we can glean from the jury not being able to decide this case. Perhaps another jury would have a different outcome," said Zapf, who expected to rely on questionnaires, which are routinely sent to jurors following a case, for feedback.

Zapf said he did not plan to drop the felony against Saucedo and had not found any applicable lesser charge for a possible plea deal. And Zapf, like Ward, expected to go to trial again.

Even with that cloud hanging over him, Ward said, Saucedo was relieved.

"Part of him feels exonerated because certainly not every juror feels he did something wrong," Ward said. "I guess the best way to put it is there's nothing a jury can do that's going to make him feel worse than he already does. And I don't know that there's

Incumbent vs. incumbent

Here's a look at the contests between incumbents that would be forced by the county's three draft

Plan A:

Bill Grady vs. Rob Zerban
Dayvin Hallmon vs. John Grulich Jr.
Ronald Johnson vs. William P. Michel II
Doug Noble vs. Fred Ekornaas
Kim Breunig vs. Michael Underhill

Plan B:

Grady vs. Ed Kubicki
Zerban vs. Hallmon
Michael Goebel vs. David Celebre
Johnson vs. Michel
Jeffrey Gentz vs. John O'Day
Gail Gentz vs. Underhill
Breunig vs. Ekornaas
Bob Haas vs. Erin Decker

Plan C:

Grady vs. Z
Hallmon vs
Johnson vs
Haas vs. D
Noble vs. C

Residents flee as levee overflows i

POPLAR BLUFF, Mo. (AP) — Thunder roared and tornado warning sirens blared, and all emergency workers in the southeast Missouri town of Poplar Bluff could do Monday was hope the saturated levee holding back the Black River would survive yet another downpour.

Murky water flowed over the levee at more than three dozen spots and crept toward homes in the flood plain. Some had already flooded. If the levee broke — and forecasters said it was in imminent danger of doing so — some 7,000 residents in and around Poplar Bluff would be displaced.

One thousand homes were evacuated earlier in the day. Sandbagging wasn't an option, Police Chief Danny Whitely said. There were too many trouble spots, and it was too dangerous to put people on the levee. Police went door-to-door encouraging people to get out. Some scurried to collect belongings, others chose to stay. Two men had to be rescued by boat.

It could be a long week of



AP PHOTO

Leon Gentry looks out over floodwaters from Canoe Creek that surround his garage after he spent Monday morning working to secure what he could from the rising water in Henderson, Ky.

waiting for the rain to stop in Poplar Bluff and other river towns in the Mississippi and Ohio river valleys. Storms have ripped through parts of middle America for weeks, and they were followed Monday by heavy rain that pelted an area from northeast Texas to Kentucky. One person was killed in Arkansas when floodwaters swept her minivan off

a roadway and into the Illinois River in the Fayetteville area, authorities said.

In communities already hit by severe thunderstorms and tornadoes, residents watched rivers and lakes rise with a growing sense of dread. Some rented moving trucks to haul their possessions to safety, while others evacuated quickly, carrying their

LOTTERY

For tickets dated Monday, April 25, 2011

Wisconsin

Daily Pick 3: 6-0-0
Daily Pick 4: 2-5-4-4
SuperCash: 1-2-6-26-31-34.
Doubler? No.
Badger 5: 11-18-24-28-29.

Illinois

Pick Three-Midday: 3-9-5
Pick Three-Evening: 8-0-4
Pick Four-Midday: 6-3-7-8
Pick Four-Evening: 2-9-5-9
Little Lotto: 6-7-8-17-38

Multi-state

Mega Millions: Jackpot for today: \$29 million.
Powerball: Jackpot for Wednesday: \$20 million.

Even with that cloud hanging over him, Ward said, Saucedo was relieved.

"Part of him feels exonerated because certainly not every juror feels he did something wrong," Ward said. "I guess the best way to put it is there's nothing a jury can do that's going to make him feel worse than he already does. And I don't know that there's anything that the jury can do to make anything better. He was resolved that we would do the best we could at trial and the rest was up to God."

CORRECTIONS

The Kenosha News believes in accuracy and setting the record straight. If you have a question regarding a story, cutline or headline, contact the city desk at 656-6279 or 656-6377.

A brief on a traffic accident in Monday's paper incorrectly referred to driver Jessie Williams as male. The car driven by Williams was hit by a car driven by William Boyd, a point that wasn't clear in the item. The item also said Williams was ticketed for not wearing a seat belt; in fact, it was a passenger in her car who was ticketed. Williams was not cited for any infraction. She was taken to St. Catherine's Medical Center by a family member.

It could be a long week of

waters swept her minivan off

LOTTERY

For tickets dated Monday, April 25, 2011

Wisconsin

Daily Pick 3: 6-0-0
Daily Pick 4: 2-5-4-4
SuperCash: 1-2-6-26-31-34.
Doubler? No.
Badger 5: 11-18-24-28-29.
Estimated jackpot: \$10,000.
Megabucks: Jackpot for Wednesday: \$5.2 million.

Illinois

Pick Three-Midday: 3-9-5
Pick Three-Evening: 8-0-4
Pick Four-Midday: 6-3-7-8
Pick Four-Evening: 2-9-5-9
Little Lotto: 6-7-8-17-38
Lotto: 6-13-14-25-32-45. Jack-pot: \$14.25 million.

Conceptis Sudoku

By Dave Green

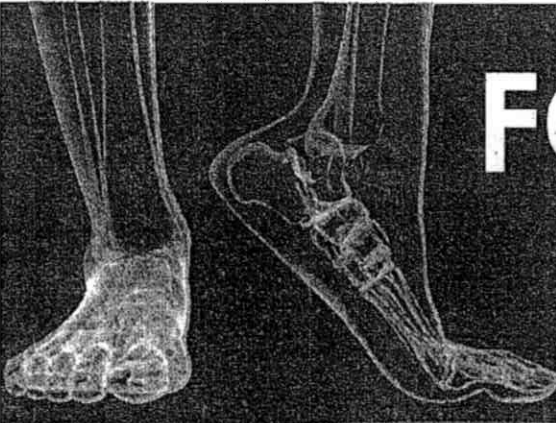
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8		5					1	
	2		4					6
5		6			2			
	3		1	5		2		

Difficulty Level ★★

4/26

How to play Sudoku: Use numbers 1 through 9 once in each row and each column. Also, numbers 1 through 9 can only be used once in each 3x3 quadrant (upper left, upper center, upper right, etc.).

See today's answer on page A2.



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Dr. Cindy Cornish, Dr. Jeremy Fleischmann, Dr. Robert Young



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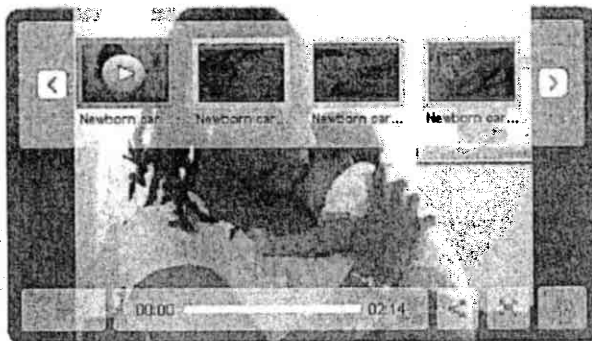
news: 36 Military Moms-To-Be Get Dream Baby Sho...
March of Dimes President Wins Graven Lead...

Baby care 101

Always put baby to sleep on her back to avoid SIDS.

Respond quickly to your crying baby, but don't shake her.

Give your baby some tummy time when she's awake.



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Sleeping with your baby

The idea of having your baby sleep beside you in your bed (called "co-sleeping") may be warm and comforting. But is it safe?

The American Academy of Pediatrics (AAP) and the U.S. Consumer Product Safety Commission (CPSC) warn that infants should not co-sleep with their parents.

Risk of suffocating

During co-sleeping, a baby can be hurt by:

- Getting trapped by the bed frame, headboard or footboard
- Getting trapped between the bed and the wall, furniture or other object
- Falling from the bed onto piles of clothing, plastic bags or other soft materials
- Suffocating on a waterbed, mattress or soft bedding (pillows, blankets, quilts, etc.)
- Having a parent (especially a parent who has used alcohol or drugs) roll on top of the baby

Co-sleeping and SIDS

Sudden infant death syndrome (SIDS) is the sudden, unexplained death of an infant younger than 1 year old. About half of SIDS deaths occur when the baby is sharing a bed, sofa or sofa chair with another person.

Other potential problems

Co-sleeping may keep parents from getting a good night's sleep. A baby who co-sleeps may have trouble falling asleep:

- When she is alone at naptime
- When she needs to go to sleep before her parent is ready

Safer co-sleeping: Dos and don'ts

If you do decide to share your bed with a baby under 12 months old, here are some DOs and DON'Ts.

Dos:

- Always place your baby on his or her back to sleep. Babies who sleep on their backs have less risk of SIDS than babies who sleep on their tummies or sides.
- Always leave your child's head uncovered while sleeping.
- Be sure there are no openings in the bed's headboard or footboard where your baby's head could get trapped.
- Remove cords and drapes from nearby windows.
- Remove any strings or ties from your and the baby's pajamas.
- Remove soft bedding.
- Place a tight-fitting fitted sheet on the mattress.
- Make sure that there are no spaces between the bed and the wall or furniture.
- Make sure your mattress fits snugly in the bed frame.
- Make sure there is nothing near the bed that could suffocate or strangle the baby.

Don'ts

- Never put a baby to sleep in an adult bed alone.
- Never place your baby on a waterbed, sofa, soft mattress or other very soft surface.
- Never place pillows, comforters, quilts or other soft/plush items on top of or under your baby.
- Never sleep with your baby if you smoke, have been drinking, or have used medicines or drugs that make it hard for you to wake up.
- Never overdress your baby for sleep or overheat the room.

October 2009

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Family Bed Safety Checklist

From Elizabeth Pantley

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(Continued from Page 1)

Your bed must be absolutely safe for your baby. The best choice is to place the mattress on the floor, making sure there are no crevices that your baby can become wedged in. Make certain your mattress is flat, firm, and smooth. Do not allow your baby to sleep on a soft surface such as a waterbed, sofa, pillowtop mattress, beanbag chair, or any other flexible and yielding structure.

Make certain that your fitted sheets stay secure and cannot be pulled loose.

If your bed is raised off the floor, use mesh guardrails to prevent baby from rolling off the bed, and the mattress and headboard or footboard. (Some guardrails designed for older children are not safe entrap tiny bodies.)

If your bed is placed against a wall or against other furniture, check every night to be sure there is no where baby could become stuck.

An infant should be placed between his mother and the wall or guardrail. Fathers, siblings, grandparents awareness of a baby's location as do mothers. Mothers: Pay attention to your own sensitivity to baby a minimum of movement or noise — often even a sniff or snort is usually enough. If you find that your baby lets out a loud cry, seriously consider moving baby out of your bed, perhaps into a cradle or crib.

Use a large mattress to provide ample room and comfort for everyone.

Consider a "sidecar" arrangement in which baby's crib or cradle sits directly beside the main bed.

Make certain that the room your baby sleeps in, and any room he might have access to, is childproof. (Imagine your baby crawling out of bed as you sleep to explore the house. Even if he has not done this — yet — you can be certain he eventually will!)

Do not ever sleep with your baby if you have been drinking alcohol, if you have used any drugs or medications, if you are an especially sound sleeper, or if you are suffering from sleep deprivation and find it difficult to wake.

Do not sleep with your baby if you are a large person, as a parent's excess weight poses a proven risk to baby in a co-sleeping situation. I cannot give you a specific weight-to-baby ratio; simply examine how you and baby settle in next to each other. If baby rolls towards you, if there is a large dip in the mattress, or if you suspect any other dangerous situations, play it safe and move baby to a bedside crib or cradle.

Remove all pillows and blankets during the early months. Use extreme caution when adding pillows or blankets as your baby gets older. Dress baby and yourselves warmly for sleep. (A tip for breastfeeding moms: wear an old turtleneck or t-shirt, cut up the middle to the neckline, as an undershirt for extra warmth.) Keep in mind that body heat will add warmth during the night. Make sure your baby doesn't become overheated.

Do not wear nightclothes with strings or long ribbons. Don't wear jewelry to bed, and if your hair is long, pin it up.

Don't use strong-smelling perfumes or lotions that may affect your baby's delicate senses.

Do not allow pets to sleep in bed with your baby.

Never leave your baby alone in an adult bed unless that bed is perfectly safe for your baby, such as a firm mattress on the floor in a childproof room, and when you are nearby or listening in on baby with a reliable baby monitor.

As of the writing of this book, no proven safety devices exist for use in protecting a baby in an adult bed. However, a number of new inventions are beginning to appear in baby catalogs and stores in answer to the great number of parents who wish to sleep safely with their babies. You may want to look into some of these nests, wedges, cradles, sheet securers, etc.

For more information, please visit:

<http://www.drgreene.com/qa/sleep-and-family-bed>

<http://www.askdrsears.com/html/10/t102200.asp>

http://www.naturalchild.com/james_mckenna/sleeping_safe.html

http://babyparenting.about.com/od/sleeping/a/cosleep_2.htm

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EDITORIAL

Co-sleeping's benefits don't outweigh the risks

Recommend

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Yes, sleeping with a baby can be done safely, but the benefits can be accomplished through other methods. Why take such risks with a baby's life?

Aug. 29, 2009

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Milwaukee Deaths

Recent deaths in Milwaukee in which a child died while sleeping with an adult:

A 2-month-old found girl dead Aug. 25 after sleeping with her father on a couch.

An 8-week-old boy died May 17 while sleeping with his mother.

A 6-week-old boy died April 25 after sleeping with his parents and a 1-year-old sibling. The mother said she had been drinking that night.

A 2-month boy died April 19 while sharing a bed with his 18-year-old mother and 3-year-old sister.

A 3-month-old boy died April 5 while sleeping on a couch with his 47-year-old grandmother, who had been drinking.

A 6-day-old girl died March 8 while sleeping with her nearly 2-year-old

Six babies. Six deaths this year. And a common denominator: A parent or caretaker is suspected of falling asleep alongside the baby.

No issue sparks such heated debate on parenting as "co-sleeping," rivaled perhaps only by breast-feeding in public.

The co-sleeping debate usually revolves around two positions: Don't do it - ever. And, do it - but safely.

Put us in the first camp - not because we don't know that it can, in fact, be done safely but because, people being people, there is no guarantee that it will be done that way. The rules seem simple, but any number of things can and do go wrong.

The claimed benefits of co-sleeping are compelling. We acknowledge that parents who co-sleep often do so for the noblest and most logical of reasons.

For instance:

Breast-feeding is good. A baby awakening at night right next to mom is likelier to get breast-fed.

Parent and baby sleep cycles mesh better. Mom or dad don't have to get up.

A baby feels safe by having mom or dad nearby. A comforted, nurtured baby sleeps better.

Co-sleeping results in parent-child bonding. This is particularly important for parents who are separated from their child during the day.

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brother on a couch. The girl's mother, Rose Prescott, 29, "admitted that she was intoxicated and admitted that it is possible that she fell asleep with the infant on the couch," according to a medical examiner's report. A **2-month-old daughter** of Prescott's died while sleeping with Prescott in **April 2008**.

Good reasons, all. But those benefits can be achieved by other means that minimize risk to babies.

We come back to the tragedies occurring far too frequently in Milwaukee. The latest occurred Tuesday. A 2-month-old girl was found dead after co-sleeping with her father.

More on this case later.

A common retort from advocates is that deadly co-sleeping cases are significantly different from the norm.

For instance:

Most homes with babies in them also have cribs.

As the argument goes, babies that die are sleeping with their parents in their parents' beds or on sofas or with other children, because low-income families, in particular, may lack cribs or adequate sleep space.

And most parents are responsible enough to know they shouldn't party hearty and then fall asleep with their children - as has occurred in a few of the recent cases, though, from initial reports, not necessarily in the latest and not in all cases.

Yet, we suspect that babies get laid down in the "best" of homes next to mom or dad on sofas, on blankets on the floor and on parents' beds not simply for lack of cribs. Often, we're guessing, for parental convenience.

We know that older kids take care of younger kids - and fall asleep with them - in the most caring of homes.

We know that drunkenness or drug stupors aren't the norm in most homes, but a whole lot of homes have alcohol in them. It's there with the intent that some adult in the house will imbibe. And alcohol - even consumed in quantities that don't induce drunkenness - acts as a depressant, with varying effects depending on weight, tolerance and metabolism and with varying degrees of judgment impairment.

Next to this editorial, you'll see the comments of an expert - Anna C. Benton, director of family and community health services with the Milwaukee Health Department. Yes, we've let loose with both barrels today on this issue. It's that important.

We're giving it our best shot. But we know that parents who read this and others, otherwise counseled, will still co-sleep - unthinkingly, because they believe they have no alternative, or with good intentions.

Nonetheless, please read the common-sense precautions that Benton offers. Summarized, they amount to: Don't do it and remove all chance that a baby will be accidentally suffocated. We would add if you do co-sleep, make sure there isn't enough space between headboards, frames and mattresses so that a baby's head can get stuck; waterbeds are always a bad idea.

No crib?

The Hope Network, as we've previously reported, provides cribs to homes in need. The City of Milwaukee does much the same. You can see what the Hope Network has to offer at www.hopenetworkinc.org/ and you can call the Milwaukee Health Department at (414) 286-8620.

City families need more help; other social agencies should step up. With one in seven children living in poverty in Milwaukee, there's a need.

But the greater need is educating families about good sleep practices for their babies. We offer this editorial and Benton's article in that spirit.

When it comes to babies, let them sleep on their backs, with their heads uncovered and *alone* in their cribs. This is the safest bet.

Yes, co-sleeping can be done safely. But with such risk, why take such chances?

Back to that latest case. A [Journal Sentinel article](#) on Thursday reported that the Bureau of Milwaukee Child Welfare determined that another child suffered a brain injury last year as a result of being shaken by one of the dead child's parents. No criminal charges were filed.

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Why? Was there adequate follow-up with the family? Good questions that should be answered.

Is co-sleeping worth the risk? To be considered for publication as a letter to the editor, e-mail your opinion to the Journal Sentinel editorial department.



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Alcohol and Co-Sleeping Affect Risk for SIDS

Study Unravels Why Bed Sharing Raises SIDS Risk in Some Cases but Not Others

By LAUREN COX
ABC News Medical Unit

Oct. 14, 2009

Dave Taylor, a Boulder, Colo. father of three school-age kids, is one of the growing number of people who ignored pediatricians' warnings against bed-sharing as a way to reduce Sudden Infant Death Syndrome, or SIDS.

"I have three kids and they have all survived their babyhood and we co-slept with all three of them," Taylor, author of the Attachment Parenting Blog, APParenting.com, said of his children who are now 12, 9 and 5. "It started out with baby cuddling with mamma and, as they got bigger, they took over the bed. The real issue is room in the bed."

Since the 1990s "Back to Sleep" campaign reduced SIDS deaths by 50 percent, a laundry list of new advisories for parents such as removing pillows or blankets has halved the rate of SIDS once again.

But new research out of England suggests that the risks for SIDS are more nuanced than once thought.

"The findings suggest that much of the risk associated with co-sleeping may be explained by the circumstances in which the SIDS infants were found," Peter S. Blair of the University of Bristol said in a study published Tuesday in the British Medical Journal.

Blair and his colleagues followed all babies born in a southwest region of England from 2003 to 2006 to identify the common behaviors and circumstances surrounding a SIDS death.

Of the 184,800 infants tracked in the study, 90 of them died from SIDS and 80 families agreed to detailed interviews and investigation shortly after the children's deaths.

Researchers found that 54 percent of the infants who died of SIDS had been co-sleeping with parents at the time of death, while 21 percent of infants in the control groups had recently co-slept with parents.

Given the large number of children who were co-

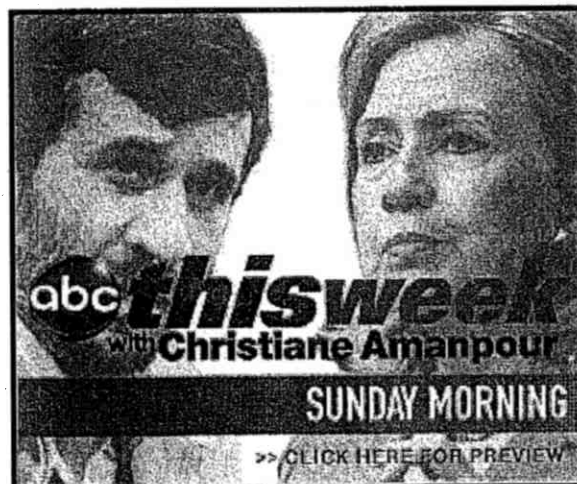
sleeping yet did not succumb to SIDS, the authors wondered whether co-sleeping alone had put children at risk for sudden death or a combination of behaviors.

When Sharing a Bed With Baby Is Most Dangerous

While children who died of SIDS also were more likely to be co-sleeping with a parent than a random selection of children, they were far more likely to be sleeping next to a parent who recently drank alcohol or did drugs (31 percent of children who had SIDS vs. 3 percent of children in the control groups), and were more likely to be sharing a sofa than a bed with an adult (17 percent of children who has SIDS vs. 1 percent of children in the control groups).

"What's really interesting to me about this study is how it shows we need to have a better idea about what infant-care practices are," said Dr. Eric Gibson, a neonatologist at the duPont Hospital for Children at Thomas Jefferson University in Wilmington, Del.

Gibson was also pleased to see more investigation because doctors still don't understand why factors such as sleep position, whether the mother smoked during pregnancy or whether the baby was born prematurely actually cause SIDS.



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Bristol's Blair and his colleagues wrote, "The safest place for an infant to sleep is in a cot [crib] beside the parents' bed. Based on evidence from research into SIDS, it is questionable whether advice to avoid bed sharing is generalizable and whether such a simplistic approach would do no harm.

"Parents of young infants need to feed them during the night, sometimes several times, and if we demonize the parents' bed, we may be in danger of the sofa being chosen."

Upon hearing of the additional risks listed in the study such as a combination of co-sleeping and parental alcohol use, blogger Taylor wondered if parents' reasons for bed sharing may be part of the nuanced finding in the new study.

"With co-sleeping, it's really a matter of whether because it's conscious parenting, or whether it's just, 'We don't want to get a crib because it's a hassle,'" Taylor said.

Taylor said he eventually built a smaller bed, the family's "side car," at the same height as the parent's bed for the new additions to the family.

In an editorial published Tuesday in the British Medical Journal, Dr. Edwin Mitchell, professor of child health research at the University of Auckland in New Zealand, wrote, "So what needs to be done? We have learnt that SIDS is largely preventable. Further epidemiological studies will provide only relatively small gains and some clarification of the risk factors."

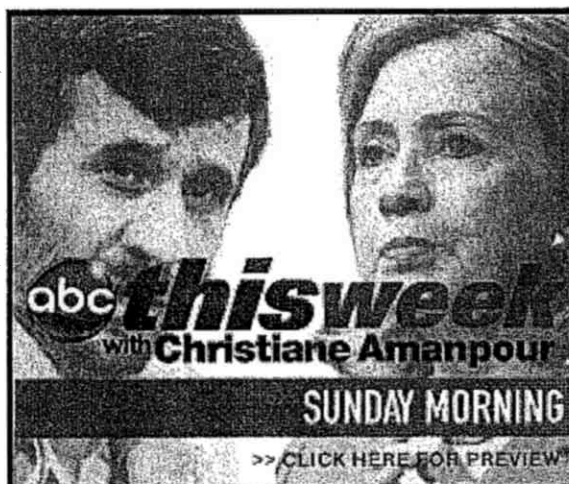
Mitchell proposed surveys to keep doctors up to date about parental behavior, saying, "Educational research is needed, in particular, how to change behavior."

But Linda Tantawi, executive director of the CJ Foundation for SIDS in Hackensack, N.J., took issue with the notion that SIDS is preventable, especially because doctors do not know what causes it.

"We don't want to mix up risk factors with causes -- say that SIDS is largely preventable. Can you imagine a SIDS mom reading this, one who found her baby on her back, dead?" Tantawi said.

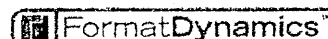
Tantawi pointed out that a variety of behaviors can affect the risk of SIDS.

"We know that breastfeeding reduces the risk, but are we making mothers breast feed?" Tantawi said. "We know that putting a fan in the room reduces the risk, but do we have to make everyone put a fan in the room?"



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About.com. Toddlers**Checklist for Safe Co-sleeping**

From Elizabeth Pantley

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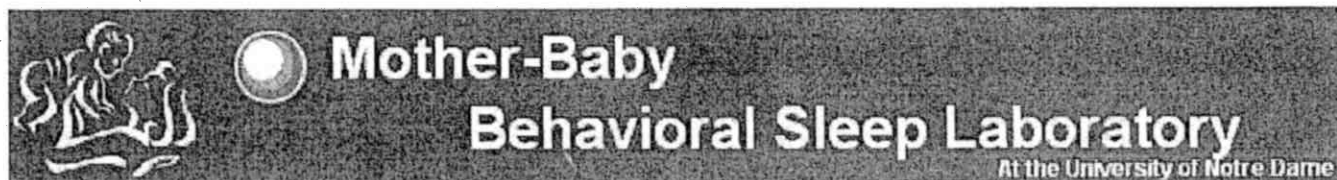
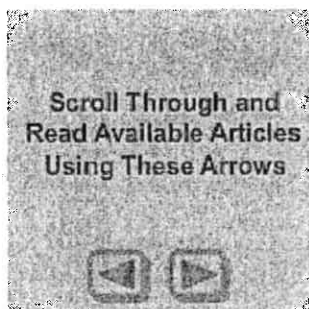
Throughout my book, *The No-Cry Sleep Solution*, it's evident that all four of our babies have been welcomed into our family. I have allowed our children to share our bed, and our children have enjoyed sharing a "sibling bed" as well. Of critical importance is that we have followed religiously all known safety recommendations for sharing sleep with our babies.

The safety of bringing a baby into an adult bed has been the subject of much debate in modern society, especially recently. The Consumer Product Safety Commission (CPSC) announced a recommendation against co-sleeping with a baby under age two. Nevertheless, nearly 70% of parents do share sleep with their babies either part or all of the night. Most parents who do choose to co-sleep find the practice and find many benefits in it.

The CPSC's warning is controversial and has stirred heated debate among parents, doctors, and childhood development experts. The appropriateness of the recommendation; many experts believe that the issue demands more research. In the meantime, parents should investigate all the viewpoints and make the right decision for your family. And remember: Even if you decide against co-sleeping, look forward to sharing sleep with your older baby if that suits your family.

The following safety list, as well as any references to co-sleeping in my book and on this Website, are provided for those who have made an informed choice to co-sleep with their baby. Wherever you choose to have your baby sleep, please heed the following recommended safety precautions:

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Guidelines to Sleeping Safe with Infants:

Maximizing the chances of Safe Infant Sleep in the Solitary and Cosleeping (Specifically, Bed-sharing) Contexts.

by James J. McKenna, Ph.D. Professor of Biological Anthropology, Director, Mother-Baby Sleep Laboratory, University of Notre Dame.

Below I have summarized and highlight some of the issues to be concerned with as you make your own decisions about where and how your infant should sleep.

1) What constitutes a "safe sleep environment" irrespective of where the infant sleeps?

a) Infants should sleep on firm surfaces, clean surfaces, in the absence of smoke, under light (comfortable) blanketing and their heads should never be covered. The bed should not have any stuffed animals or pillows around the infant and never should an infant be placed to sleep on top of a pillow. Sheepskins or other fluffy material and especially bean bag mattresses should never be used. Water beds can be dangerous, too, and always the mattresses should tightly intersect the bed-frame. Infants should never sleep on couches or sofas, with or without adults wherein they can slip down (face first) into the crevice or get wedged against the back of a couch.

2) Bed-sharing: It is important to be aware that adult beds were not designed to assure infants safety!

b) if bed-sharing, ideally, both parents should agree and feel comfortable with the decision. Each bed-sharer should agree that he or she is equally responsible for the infant and acknowledge that the infant is present. My feeling is that both parents should think of themselves as primary caregivers.

c) infants a year or less should not sleep with other children siblings - but always with a person who can take responsibility for the infant being there;

d) persons on sedatives, medications or drugs, or is intoxicated --or excessively unable to arouse should not cosleep on the same surface with the infant.

e) excessively long hair on the mother should be tied up to prevent infant entanglement around the infant's neck--(yes, it has really happened!)

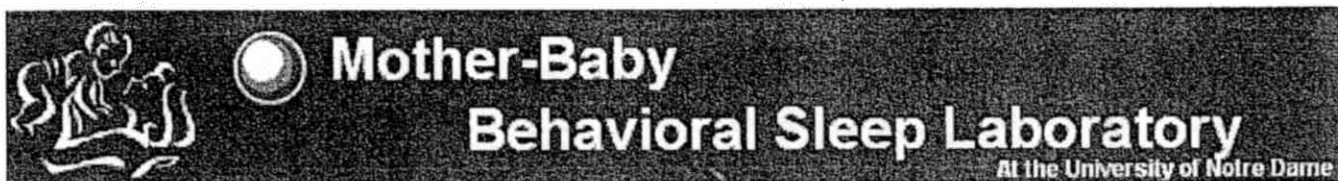
f) extremely obese persons, who may not feel where exactly or how close their infant is, may wish to have the infant sleep alongside but on a different surface.

g) It is important to realize that the physical and social conditions under which infant-parent cosleeping occur, in all its diverse forms, can and will determine the risks or benefits of this behavior. What goes on in bed is what matters.

h) It may be important to consider or reflect on whether you would think that you suffocated your baby if, under the most unlikely scenario, your baby died from SIDS while in your bed. Just as babies can die from SIDS in a risk free solitary sleep environment, it remains possible for a baby to die in a risk-free cosleeping/bed sharing environment. Just make sure, as much as this is possible, that you would not assume that, if the baby died, that either you or your spouse would think that bed-sharing contributed to the death, or that one of your really suffocated (by accident) the infant. It is worth thinking about.

3) I do not recommend to any parents any particular type of sleeping arrangement since I do not know the circumstances within which particular parents live. What I do recommend is to consider all of the possible choices and to become as informed as is possible matching what you learn with what you think can work the best for you and your family.





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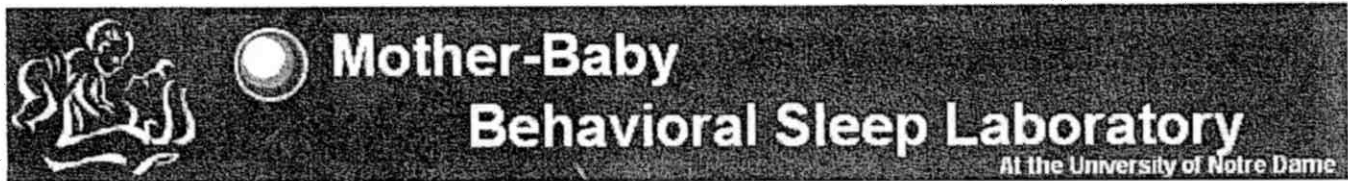
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Cosleeping and Overlaying/Suffocation: Is there a chance I'll roll over and crush my child?

To claim that there is NO chance of an adult overlaying a baby would be irresponsible, but so would it be irresponsible to claim that an Infant could never be killed while traveling in an automobile, or while sleeping alone in a crib which has an overly soft mattress, or crib slats which do not prevent the Infant's head from passing between them. In each case, the dangers are significantly reduced - and the potential benefits of car travel or Infants sleeping alone (where this is what parents want) can be realized -- when the safety precautions unique to each choice of behavior are regarded. In the case of automobile travel, strapping Infants correctly into a consumer safety approved car sits, and not driving while under the influence (of drugs or alcohol) makes car transportation worth the relatively small risk such travel imposes.

No infant sleep environment is risk free. As regards cosleeping (In the form of bed-sharing) what we know to be true scientifically is that for nocturnal infant breast feeding and nurturing throughout the night both mothers and babies were designed biologically and psychologically to sleep next to one another. And while beds per se did not evolve mother-Infant cosleeping most assuredly did-and not maximize infant and maternal health and infant survival! Infant-parent cosleeping with nocturnal breast feeding takes many diverse forms, and it continues to be the preferred "normal" species-wide sleeping arrangement for human mother-baby pairs. In the worldwide ethnographic record, mothers accidentally suffocating their babies during the night is virtually unheard of, except among western industrialized nations, but here there are in the overwhelming number of cases, explanations of the deaths that require reference to dangerous circumstances and not to the act itself.

Let me expand a bit on what we know to be true scientifically. Anthropological and developmental studies suggest that mothers and infants are designed to respond to the presence of the other, and no data have ever shown that among mother-baby pairs who cosleep for breast feeding in a safe cosleeping/bed-sharing environment that mothers are unable to sense the proximity of their babies in order to avoid smothering them. Our own laboratory sleep studies of cosleeping/bed-sharing mothers infant pairs (2 to 4 month olds) reveal that both breast feeding mothers and their Infants are extremely sensitive throughout their night - across all sleep stages - to the movements and physical condition of the other.

The healthy infant, which includes most Infants, are able to detect instances, where for example, their air passages are blocked. They can respond very effectively to alert the mother to potential danger, and they have the physical skills to maneuver out of danger, under normal circumstances. That being said, modern societies and the objects on which we sleep and the social and physical conditions within which bed-sharing can and often does occur especially among the urban poor forces professionals to be very guarded when discussing bed-sharing and/or cosleeping. The truth is that there is no one outcome (good or bad) that can be

associated with cosleeping in the form of "bed-sharing, but rather a range of outcomes (from potentially beneficial to dangerous and risky) depending on the overall circumstances within which the cosleeping takes place.

For example, the condition of the sleeping surface - the bed (in Western cultures) and the condition and frame of mind of the adult cosleeper (s), and the purposes for cosleeping -- are very important in assessing the relative safety, dangers or potential benefits of sleeping with your infant or child. During my many years of studying infant-parent cosleeping/bed-sharing, I am unaware of even one instance in which, under safe social and physical conditions, a mother, aware that her infant was in bed with her, ever suffocated her infant. But just as is true for other aspects of infancy or childhood important precautions need to be taken if families elect to bed-share. For example, bed-sharing should be avoided entirely if the mother smokes (either throughout her pregnancy or after) as maternal smoking combined with bed-sharing increases the chances of SIDS.

While there is evidence that accidental suffocation can and does occur in bed-sharing situations, in the overwhelming number of cases (sometimes in 100% of them) in which a real overlay by an adult occurs, extremely unsafe sleeping condition or conditions can be identified including situations where adults are not aware that the infant was in the bed, or an adult sleeping partners who are drunk or desensitized by drugs, or indifferent to the presence of the baby. In these cases often the suffocation occurs while the parent and infant sleep on a sofa or couch together.

In my own work I stress that a distinction must be made between the inherently protective and beneficial nature of the mother-infant cosleeping/breast feeding context, and the conditions (of the mother and the physical setting including equipment) within which it occurs - which can range from extremely safe to unsafe and risky.

While mother-infant cosleeping evolved biologically, it is wise to recall that beds did not; whether sleeping in a crib or in the adult (parental) bed, the mattress should be firm and it should fit tightly against the headboard so that an infant cannot during the night fall into a ledge face down and smother. Since contact with other bodies increases the infant's skin temperature, babies should be wrapped lightly in the cosleeping environment especially, and attention should be given to the room temperature. Obviously if the room temperature is already warm (say above 70 degrees F, the baby should not be covered with any heavy blankets, sheets or other materials. A good test is to consider whether you are comfortable; if you are, then the baby probably is as well.

I would avoid cosleeping with a baby on a couch as too many that I know of slipped face down into the cracks between the pillow seats and were compressed against the back wall of the couch, or fell face down into the back part of the couch and suffocated. Personally, I would also avoid cosleeping on waterbed, although there may be some instances they are firm enough and lack deep crevices (around the frame) that could be deemed safe.

Under no circumstances should the baby sleep on top of a pillow, or have its head covered by a blanket. Moreover, if another adult is in the bed, the second adult should be aware (made aware of) the presence of the baby, and it should never be assumed that the other adult knows that the baby is present. Parents should discuss with each other whether they both feel comfortable with the baby being in the bed and with them. I always suggest that if parents elect to cosleep in the form of bed-sharing each parent (and not just one) should agree to be responsible for the baby. Such a decision, by both sleeping adults, maximizes attention to the presence of the infant.

Toddlers or other little children should not be permitted to sleep in the adult bed next to an infant as toddlers are unaware of the dangers of suffocation. Moreover, it is safer not to permit an infant and a toddler to sleep alone together in the same bed.

Finally, it is not a pleasant thought to consider, but I always think that it is important to consider if, by chance, an infants died from SIDS while sleeping next to you, would you assume that you suffocated the infant, or would you know that you did not, that the infant died independently of your presence? If you are unable to believe that a SIDS could occur independent in the bed-sharing or bed-sharing/breast feeding context, just as it can under perfectly safe solitary sleeping conditions, then perhaps it might be best to have the your infant cosleep next to you on a separate surface, rather than actually in your bed. Regardless of what you decide, it is important to consider the possibility, no matter how remote and unlikely such a scenario may be. That SIDS can, indeed, occur, where safe bed-sharing, breast feeding and complete nurturing and care for the infant has occurred, makes this question worth discussing amongst you and your partner.

Let me end on a positive note: all else being safe, bed-sharing among nonsmoking mothers who sleep on firm mattresses specifically for purposes of breast feeding, may be the most ideal form of bed-sharing where both mother and baby can benefit by, among other things, the baby getting more of mother's precious milk and both mothers and babies getting more sleep - two findings which emerged from our own studies.



2150A NEGLECTING A CHILD: DEATH AS A CONSEQUENCE — § 948.21

Statutory Definition of the Crime

JUL 27 2011

Neglecting a child, as defined in § 948.21 of the Criminal Code of Wisconsin, is committed by any person who is responsible for a child's welfare and who intentionally contributes to the neglect of the child where death is a consequence.

State's Burden of Proof

Before you may find the defendant guilty of this offense, the State must prove by evidence which satisfies you beyond a reasonable doubt that the following four elements were present.

Elements of the Crime That the State Must Prove

1. (Name of child) was under the age of 18 years.

Knowledge of (name of child)'s age by the defendant is not required¹ and mistake regarding (name of child)'s age is not a defense.²

2. The defendant was a person responsible for the welfare of (name of child).

A "person responsible for the welfare of a child" includes (use the appropriate term from § 948.01(3)).³

3. The defendant intentionally contributed to the neglect of (name of child).

4. Death of (name of child) was a consequence of the defendant intentionally contributing to the neglect of (name of child).

This requires that the defendant's contributing to the neglect of (name of child) was a substantial factor in producing the death of (name of child).⁴

Meaning of "Intentionally Contributed"

The term "intentionally contributed" means that the defendant either had a purpose to contribute to neglect or was aware that (his) (her) action or failure to take action was practically certain to cause that result.⁵

Deciding About Intent

You cannot look into a person's mind to find intent. Intent must be found, if found at all, from the defendant's acts, words, and statements, if any, and from all the facts and circumstances in this case bearing upon intent.

Meaning of "Neglect"

A child is neglected when the person responsible for the child's welfare fails for reasons other than poverty to provide necessary care, food, clothing, medical or dental care, or shelter so as to seriously endanger the physical health of the child.⁶

Jury's Decision

If you are satisfied beyond a reasonable doubt that all four elements of this offense have been proved, you should find the defendant guilty.

If you are not so satisfied, you must find the defendant not guilty.

COMMENT

Wis JI-Criminal 2150A was approved by the Committee in October 2001.

This instruction is for a violation of § 948.21, created by 1987 Wisconsin Act 332 as part of the revision of the criminal statutes relating to crimes against children. It applies to offenses committed on or after July 1, 1989. See the Comment to Wis JI-Criminal 2150.

This instruction was created in 2001 to provide a separate instruction for violations of § 948.21 that result in death. Previously, Wis JI-Criminal 2150 recommended adding an element to that instruction for the death case.

1. This is the rule provided in § 939.23(6).

2. This is the rule provided in § 939.43(2).

3. The Committee recommends inserting the appropriate term from § 948.01(3), which defines "person responsible for the child's welfare" to include the following: the child's parent; stepparent; guardian; foster parent; treatment foster parent; an employee of a public or private residential home, institution or agency; other person legally responsible for the child's welfare in a residential setting; or a person employed by one legally responsible for the child's welfare to exercise temporary control or care for the child.

A biological father, who has admitted paternity in writing, is a "parent" and thus a "person responsible for the child's welfare" under § 948.21. State v. Evans, 171 Wis.2d 471, 391 N.W.2d 141 (1992).

See the Comment to Wis JI-Criminal 2114 for discussion of case law interpreting this term.

4. The Committee has concluded that the simple "substantial factor" definition of cause should be sufficient for most cases. Where there is evidence of more than one possible cause, something like the following might be added immediately preceding the sentence in the instruction beginning with "before":

There may be more than one cause of death. The act of one person alone might produce it, or the acts of two or more persons might jointly produce it.

Of course, § 948.21 does not use the word "cause" but rather refers to death being "a consequence." In this respect, it is like several other criminal statutes using "results in" or "as a result" to establish the causal connection between the actor's conduct and the prohibited result. The Committee has concluded that "as a result" or "results in" should be interpreted to mean "cause," traditionally defined in terms of "substantial factor." This conclusion is supported by State v. Bartlett, 149 Wis.2d 557, 439 N.W.2d 595 (Ct. App. 1989), where the court held that § 346.17(3) was not unconstitutionally vague because "results in" means "cause" and therefore defines the offense with reasonable certainty. The court further held that the evidence was sufficient to support the conviction because it showed that the defendant's conduct was a substantial factor in causing the death. The court noted that more than but-for cause is required: "The state must further establish that 'the harmful result in question be the natural and probable consequence of the accused's conduct,' i.e., a substantial factor." 149 Wis.2d 557, 566, citing State v. Serebin, 119 Wis.2d 837, 350 N.W.2d 65 (1984).

5. See § 939.23(3) and Wis JI-Criminal 932A and 923B.

6. In the Wisconsin Children's Code, the term "neglected children" has been replaced with a broad category of "children alleged to be in need of protection or services" (§ 48.13). The section lists twelve different situations which indicate that a child is in need of protection or services.

One situation, described in § 48.13(10), is that in which a child's "... parent, guardian or legal custodian neglects, refuses or is unable for reasons other than poverty to provide necessary care, food, clothing, medical or dental care or shelter so as to seriously endanger the physical health of the child."

A similar definition is found in § 48.981(1)(d) which defines a "neglected child" for the purposes of reporting child abuse as: "... a child whose parent, guardian, legal custodian or other person exercising temporary or permanent control over the child neglects, refuses or is unable for reasons other than poverty to provide necessary care, food, clothing, medical or dental care or shelter so as to seriously endanger the physical health of the child."

These definitions have been adopted for use in this instruction.

For cases finding the evidence sufficient to show "intentionally contributing to neglect," see State v. Evans, supra note 3, and State v. Hollingsworth, 160 Wis.2d 883, 467 N.W.2d 555 (Ct. App. 1991). Both decisions cite Wis JI-Criminal 2150 with apparent approval.

Hurley, Peggy

From: Rep.Kerkman
Sent: Tuesday, July 26, 2011 12:39 PM
To: Hurley, Peggy
Cc: Rep.Kerkman; Rongstad, Tami
Subject: Drafting Request: Intoxicated Co-Sleeping
Attachments: A KenoshaCoDA Letter 20110715.pdf; B KenoshaCoDA JuryIns 20110727.pdf; C KenoshaCoDA Complaint+Press 20110727.pdf; D KenoshaCoDA GenInfo 20110727.pdf

Peggy,

Rep. Kerkman would like legislation drafted that would make it a crime to co-sleep or bed share with an infant while one is intoxicated or impaired.

The closest law on the books appears to be contributing to the neglect of a child.

Attached please find information provided by Kenosha County District Attorney Robert D. Zapf which may be useful:

- A. Letter explaining the need
- B. Jury instructions re: neglecting a child where death is a consequence
- C. A criminal complaint in a co-sleeping death and related news articles
- D. General information re: co-sleeping

If I was directed to you in error, please feel free to forward this email and its attachments to the proper drafting attorney.

Thank you,

Tami Rongstad
Office of Rep. Samantha Kerkman
608-266-2531 / 888-534-0066